

1  
2  
3  
4  
5  
6  
7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 RENALDO WHITE and RANDOLPH  
11 NADEAU, individually and on behalf of all  
12 others similarly situated,

13 Plaintiffs,

14 v.

15 SYMETRA ASSIGNED BENEFITS SERVICE  
16 COMPANY and SYMETRA LIFE  
17 INSURANCE COMPANY,

18 Defendants.

CASE NO. C20-1866 MJP

**AGREEMENT REGARDING  
DISCOVERY OF ELECTRONICALLY  
STORED INFORMATION AND  
ORDER**

19 The parties hereby stipulate to the following provisions regarding the discovery of  
20 electronically stored information (“ESI”) in this matter:

21 **A. General Principles**

22 1. An attorney’s zealous representation of a client is not compromised by conducting  
23 discovery in a cooperative manner. The failure of counsel or the parties to litigation to cooperate  
24 in facilitating and reasonably limiting discovery requests and responses raises litigation costs and  
25 contributes to the risk of sanctions.

26 2. As provided in LCR 26(f), the proportionality standard set forth in Fed. R. Civ. P.  
26(b)(1) must be applied in each case when formulating a discovery plan. To further the

1 application of the proportionality standard in discovery, requests for production of ESI and  
2 related responses should be reasonably targeted, clear, and as specific as possible.

3 **B. ESI Disclosures**

4 Within 30 days of entry of this Order, or at a later time if agreed to by the parties, each  
5 party shall disclose:

6 1. Custodians. The eight custodians for each named party most likely to have  
7 discoverable ESI in their possession, custody, or control. The custodians shall be identified by  
8 name, title, connection to the instant litigation, and the type of the information under the  
9 custodian's control. The parties agree in good faith to adjust the number of custodians as  
10 necessary.

11 2. Non-custodial Data Sources. A list of non-custodial data sources (*e.g.*, shared  
12 drives, servers), if any, likely to contain discoverable ESI.

13 3. Third-Party Data Sources. A list of third-party data sources, if any, likely to  
14 contain discoverable ESI (*e.g.*, third-party email providers, mobile device providers, cloud  
15 storage) and, for each such source, the extent to which a party is (or is not) able to preserve  
16 information stored in the third-party data source.

17 4. Inaccessible Data. A list of data sources, if any, likely to contain discoverable ESI  
18 (by type, date, custodian, electronic system or other criteria sufficient to specifically identify the  
19 data source) that a party asserts is not reasonably accessible under Fed. R. Civ. P. 26(b)(2)(B).

20 **C. ESI Discovery Procedures**

21 1. On-site inspection of electronic media. Such an inspection shall not be required  
22 absent a demonstration by the requesting party of specific need and good cause or by agreement  
23 of the parties.

24 2. Search methodology. The parties shall timely confer to attempt to reach  
25 agreement on appropriate search terms and queries, file type and date restrictions, data sources  
26 (including custodians), and other appropriate computer- or technology-aided methodologies,

1 before any such effort is undertaken. The parties shall continue to cooperate in revising the  
2 appropriateness of the search methodology.

3 a. Prior to running searches:

4 i. The producing party shall disclose the data sources (including  
5 custodians), search terms and queries, any file type and date restrictions, and any other  
6 methodology that it proposes to use to locate ESI likely to contain responsive and discoverable  
7 information. The producing party may provide unique hit counts for each search query.

8 ii. The requesting party is entitled to, within 14 days of the  
9 producing party's disclosure, add no more than 33 search terms or queries to those disclosed by  
10 the producing party absent a showing of good cause or agreement of the parties.

11 iii. The following provisions apply to search terms / queries of the  
12 requesting party. Focused terms and queries should be employed; broad terms or queries, such  
13 as product and company names, generally should be avoided. A conjunctive combination of  
14 multiple words or phrases (*e.g.*, "computer" and "system") narrows the search and shall count as  
15 a single search term. A disjunctive combination of multiple words or phrases (*e.g.*, "computer"  
16 or "system") broadens the search, and thus each word or phrase shall count as a separate search  
17 term unless they are variants of the same word. The producing party may identify each search  
18 term or query returning overbroad results demonstrating the overbroad results and a counter  
19 proposal correcting the overbroad search or query.

20 b. After production: Within 21 days of the producing party notifying the  
21 receiving party that it has substantially completed the production of documents responsive to a  
22 request, the responding party may request no more than 33 additional search terms or queries.  
23 The immediately preceding section (Section C(2)(a)(iii)) applies.

24 c. Upon reasonable request, a party shall disclose information relating to  
25 network design, the types of databases, database dictionaries, the access control list and security  
26 access logs and rights of individuals to access the system and specific files and applications, the

ESI document retention policy, organizational chart for information systems personnel, or the backup and systems recovery routines, including, but not limited to, tape rotation and destruction/overwrite policy.

3. Format.

a. ESI will be produced to the requesting party with searchable text, in a format to be decided between the parties. Acceptable formats include, but are not limited to, native files, multi-page TIFFs (with a companion OCR or extracted text file), single-page TIFFs (only with load files for e-discovery software that includes metadata fields identifying natural document breaks and also includes companion OCR and/or extracted text files), and searchable PDF.

b. Unless otherwise agreed to by the parties, files will be produced in native format.

c. Each document image file shall be named with a unique number (Bates Number). File names should not be more than twenty characters long or contain spaces. When a text-searchable image file is produced, the producing party must preserve the integrity of the underlying ESI, *i.e.*, the original formatting, the metadata (as noted below) and, where applicable, the revision history.

d. If a document is more than one page, the unitization of the document and any attachments and/or affixed notes shall be maintained as they existed in the original document.

e. The parties shall produce their information in the following format: single- page images and associated multi-page text files containing extracted text or with appropriate software load files containing all information required by the litigation support system used by the receiving party.

f. The full text of each electronic document shall be extracted ("Extracted Text") and produced in a text file. The Extracted Text shall be provided in searchable ASCII

1 text format (or Unicode text format if the text is in a foreign language) and shall be named with  
2 a unique Bates Number (*e.g.*, the unique Bates Number of the first page of the corresponding  
3 production version of the document followed by its file extension).

4 4. De-duplication. The parties may de-duplicate their ESI production across  
5 custodial and non-custodial data sources after disclosure to the requesting party, and the  
6 duplicate custodian information removed during the de-duplication process tracked in a  
7 duplicate/other custodian field in the database load file.

8 5. Email Threading. The parties may use analytics technology to identify email  
9 threads and need only produce the unique most inclusive copy and related family members and  
10 may exclude lesser inclusive copies. Upon reasonable request, the producing party will produce  
11 a less inclusive copy.

12 6. Metadata fields. If the requesting party seeks metadata, the parties agree that only  
13 the following metadata fields need be produced, and only to the extent it is reasonably accessible  
14 and non-privileged: document type; custodian and duplicate custodians (or storage location if no  
15 custodian); author/from; recipient/to, cc and bcc; title/subject; email subject; file name; file size;  
16 file extension; original file path; date and time created, sent, modified and/or received; and hash  
17 value. The list of metadata type is intended to be flexible and may be changed by agreement of  
18 the parties, particularly in light of advances and changes in technology, vendor, and business  
19 practices.

20 7. Hard-Copy Documents. If the parties elect to produce hard-copy documents in an  
21 electronic format, the production of hard-copy documents will include a cross-reference file that  
22 indicates document breaks and sets forth the custodian or custodian/location associated with each  
23 produced document. Hard-copy documents will be scanned using Optical Character Recognition  
24 technology and searchable ASCII text files will be produced (or Unicode text format if the text is  
25 in a foreign language), unless the producing party can show that the cost would outweigh the  
26 usefulness of scanning (for example, when the condition of the paper is not conducive to

1 scanning and will not result in accurate or reasonably useable/searchable ESI). Each file will be  
2 named with a unique Bates Number (*e.g.*, the unique Bates Number of the first page of the  
3 corresponding production version of the document followed by its file extension).

4 **D. Preservation of ESI**

5 The parties acknowledge that they have a common law obligation, as expressed in Fed.  
6 R. Civ. P. 37(e), to take reasonable and proportional steps to preserve discoverable information  
7 in the party's possession, custody, or control. With respect to preservation of ESI, the parties  
8 agree as follows:

9 1. Absent a showing of good cause by the requesting party, the parties shall not be  
10 required to modify the procedures used by them in the ordinary course of business to back-up  
11 and archive data; provided, however, that the parties shall preserve all discoverable ESI in their  
12 possession, custody, or control.

13 2. The parties will supplement their disclosures in accordance with Fed. R. Civ. P.  
14 26(e) with discoverable ESI responsive to a particular discovery request or mandatory disclosure  
15 where that data is created after a disclosure or response is made (unless excluded under Sections  
16 (D)(3) or (E)(1)-(2)).

17 3. Absent a showing of good cause by the requesting party, the following categories  
18 of ESI need not be preserved:

- 19 a. Deleted, slack, fragmented, or other data only accessible by forensics.
- 20 b. Random access memory (RAM), temporary files, or other ephemeral data  
21 that are difficult to preserve without disabling the operating system.
- 22 c. On-line access data such as temporary internet files, history, cache,  
23 cookies, and the like.
- 24 d. Data in metadata fields that are frequently updated automatically, such as  
last-opened dates (see also Section (E)(5)).
- 25 e. Back-up data that are duplicative of data that are more accessible  
26 elsewhere.

- 1 f. Server, system or network logs.
- 2 g. Data remaining from systems no longer in use that is unintelligible on the
- 3 systems in use.
- 4 h. Electronic data (*e.g.*, email, calendars, contact data, and notes) sent to or
- 5 from mobile devices (*e.g.*, iPhone, iPad, Android devices), provided that a
- 6 copy of all such electronic data is automatically saved in real time
- elsewhere (such as on a server, laptop, desktop computer, or “cloud”
- storage).

7 **E. Privilege**

8 1. A producing party shall create a privilege log of all documents fully withheld

9 from production on the basis of a privilege or protection, unless otherwise agreed or excepted by

10 this Agreement and Order. Privilege logs shall include a unique identification number for each

11 document and the basis for the claim (attorney-client privileged or work-product protection). For

12 ESI, the privilege log may be generated using available metadata, including author/recipient or

13 to/from/cc/bcc names; the subject matter or title; and date created. Should the available metadata

14 provide insufficient information for the purpose of evaluating the privilege claim asserted, the

15 producing party shall include such additional information as required by the Federal Rules of

16 Civil Procedure. Privilege logs will be produced to all other parties no later than 45 days after

17 delivering a production and no later than 7 days following the close of class discovery on

18 September 3, 2021 for documents relating to class certification. However, notwithstanding the

19 foregoing, all privilege logs must be produced no later than March 26, 2022, thirty (30) days

20 prior to the deadline for discovery motions.

21 2. Redactions need not be logged so long as the basis for the redaction is clear on the

22 redacted document.

23 3. With respect to privileged or work-product information generated after the filing

24 of the complaint, parties are not required to include any such information in privilege logs.

25 4. Activities undertaken in compliance with the duty to preserve information are

26 protected from disclosure and discovery under Fed. R. Civ. P. 26(b)(3)(A) and (B).

1           5.       Pursuant to Fed. R. Evid. 502(d), the production of any documents in this  
2 proceeding shall not, for the purposes of this proceeding or any other federal or state proceeding,  
3 constitute a waiver by the producing party of any privilege applicable to those documents,  
4 including the attorney-client privilege, attorney work-product protection, or any other privilege  
5 or protection recognized by law. Information produced in discovery that is protected as  
6 privileged or work product shall be immediately returned to the producing party, and its  
7 production shall not constitute a waiver of such protection.

8  
9           DATED this 27th day of May, 2021.

10       KELLER ROHRBACK L.L.P.

          KARR TUTTLE CAMPBELL

11  
12       s/ Gretchen Freeman Cappio

s/ Medora A. Marisseau

13       Lynn Lincoln Sarko, WSBA #16569  
14       Gretchen Freeman Cappio, WSBA #29576  
15       Ian S. Birk, WSBA #31431  
16       Adele A. Daniel, WSBA #53315  
17       1201 Third Avenue, Suite 3200  
18       Seattle, WA 98101-3052  
19       Tel.: (206) 623-1900  
20       Fax: (206) 623-3384  
21       lsarko@kellerrohrback.com  
22       gcappio@kellerrohrback.com  
23       ibirk@kellerrohrback.com  
24       adaniel@kellerrohrback.com

          Medora A. Marisseau  
          701 Fifth Ave., Ste. 3300  
          Seattle, WA 98104  
          Tel.: (206) 223-1313  
          Fax: (206) 682-7100  
          mmarisseau@karrtuttle.com

          Maeve L. O'Connor (*pro hac vice*)  
          Susan Reagan Gittes (*pro hac vice*)  
          Debevoise & Plimpton LLP  
          919 Third Avenue  
          New York, New York 10022  
          Tel.: (212) 909-6000  
          mloconnor@debevoise.com  
          srgittes@debevoise.com

*Counsel for Defendants*

25       Alison E. Chase (*pro hac vice*)  
26       KELLER ROHRBACK L.L.P.  
      801 Garden Street, Suite 301  
      Santa Barbara, CA 93101  
      Tel: (805) 456-1496  
      achase@kellerrohrback.com

      Jerome M. Marcus (*pro hac vice*)  
      Jonathan Auerbach (*pro hac vice*)  
      MARCUS & AUERBACH LLC  
      1121 N. Bethlehem Pike, Suite 60-242  
      Spring House, PA 19477  
      Tel.: (215) 885-2250  
      Fax: (888) 875-0469  
      jmarcus@marcusauerbach.com  
      auerbach@marcusauerbach.com



1 Edward Stone (*pro hac vice*)  
2 EDWARD STONE LAW P.C.  
3 175 West Putnam Avenue, 2nd Floor  
4 Greenwich, CT 06830  
5 Tel.: (203) 504-8425  
6 Fax: (203) 348-8477  
7 eddie@edwardstonelaw.com

8 *Attorneys for Plaintiffs*

9 **ORDER**

10 Based on the foregoing, IT IS SO ORDERED.

11 Dated May 27, 2021.

12 

13 Marsha J. Pechman  
14 United States District Judge